

## REMARKS

Reconsideration of the application is respectfully requested.

In the Advisory action dated 10/30/09, the Office indicates that it would be obvious to incorporate soy protein isolate and soy protein hydrolysate in a food product fermented with lactic acid bacteria because: 1) fortification with soy protein isolate is known and to have the drawback of increased fermentation time whereas soy protein hydrolysate is known to stimulate the growth of bacteria in fermented milk; and 2) fortification with soy protein isolate is known and to have the drawback of increased viscosity to an unwanted extent whereas the "artisan obviously knows that some of the soyprotein isolate can be replaced with soyprotein hydrolysate to alleviate the viscosity change because due to hydrolysis ...the protein hyrolysate does not affect the viscosity to the same extent as intact protein isolate."

The Office appears to use a classic hindsight approach to justify the rejection. When the Office states that the artisan "obviously knows" that some of the soyprotein isolate can be replaced with soyprotein hydrolysate to alleviate the viscosity change, the Office points to no support for this statement. If the Office is relying on its own technical knowledge, it is requested that the Office furnish a declaration setting forth the basis for that knowledge. What the Office appears really to be basing the rejection on is applicants' own disclosure, and that is an improper use of hindsight.

It is submitted that applicants have discovered a novel compositions which has an unexpected benefit. Even if the Office is correct that a *prima facie* case of obviousness has been made out, the Office provides no reason (other than its improper reliance on what the artisan "obviously knows") why it rejects applicants unexpected results. It is

respectfully requested that the Office either credit applicants' unexpected results and allow the application or substantiate its assertions that the results are expected.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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